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general assignment of one's estate for the benefit of creditors; more analogous to going into insolvency or bankruptcy, than carrying forward business in the ordinary course. It is common and entirely in the due course of business to endorse a note or bill in payment or as security for a pre-existing debt, and such an endorsement of negotiable paper, before due, will exclude equitable defences. The cases are collected and

classified in *Atkinson v. Brooks*, 26 Vt. 569; and the note to *Le Breton v. Peirce*, 1 Am. Law Reg. N. S. 35. But when such an endorsement assumes the form of a security for creditors generally, it at once suggests a trust for the benefit of the endorser, and no court, we think, would, under such circumstances, feel disposed to regard the transaction as excluding equitable defences. I. F. R.

Supreme Court of Iowa.

IN RE THOMAS U. RUTH.

A statute providing that no person shall sell intoxicating liquors without a permit, to be granted by the county judge, if on application he shall be satisfied that the applicant is a person "of good moral character," and that certain other requisites of the law are complied with, is constitutional.

THOMAS U. RUTH applied to the Circuit Court of Page county for permission to sell intoxicating liquors for medicinal, mechanical, sacramental, and culinary purposes: permission was refused, and thereupon he appealed to this court.

W. W. Morsman, for appellant.

No appearance contra.

BECK, J.—By sections 1575–6 of the Revision, any citizen of the state, except hotel-keepers, keepers of saloons, eating-houses, grocery-keepers, and confectioners, were permitted to sell intoxicating liquors for mechanical, medicinal, culinary, and sacramental purposes, upon presenting to the county judge a certificate of twelve citizens of the township in which he resided that he was a man of good moral character, and a citizen of the county and state, and executing bond with sureties, and conditioned as therein prescribed. The duty of a person so authorized to sell liquors, and sundry regulations touching the same, are prescribed in these sections. These provisions are amended by chap. 128 of the Acts of the 12th General Assembly, which provides that upon application being made for the permission, a day shall be

fixed for the hearing, a notice thereof be given of the time and in the manner prescribed, and that any resident of the county may, on the day of final hearing, show cause against the allowance of the permission, which "shall be refused unless the county judge shall be fully satisfied that the requirements of the law have in all respects been fully complied with, that the applicant is a person of good moral character, and that taking into consideration the wants of the locality, and the number of permits already granted, such permit would be necessary and proper for the accommodation of the neighborhood." The application of appellant was rejected, as we gather from the abstract before us, on the ground that he was not a fit and proper person as contemplated by the law to receive the permission. No question is made upon this point. Counsel concede that appellant "does not possess the standard of morals contemplated by the statute." But it is argued that the law which limits the granting of permissions of this kind to persons of good moral character, is in conflict with the Constitution of the state and therefore void. The validity of no other provision of the statute is attacked. Counsel bases his argument upon article 1st, sect. 1st, of the Constitution, which declares that all men are equal and endowed with the right of acquiring, possessing, and protecting property, and sect. 6th of the same article, which forbids the General Assembly granting "to any citizen or class of citizens, privileges or immunities, which, upon the same terms, shall not equally belong to all citizens." He argues that as intoxicating liquors are property, the General Assembly cannot restrict dealing in them for lawful purposes to any class of citizens—as to citizens of good moral character.

The breadth and design of these constitutional provisions, to secure equality of all and the enjoyment of property by all, are fully understood and as fully conceded. But the equality secured to the citizen cannot be exercised to the damage of the lives and property of others; neither can property be acquired, enjoyed, and disposed of to the peril of the lives, health, happiness, and property of others. The Constitution does not interfere with the police power of the state to protect the people in their lives, health, and property. The state is clothed with the power to prevent injury to these. See Constitution, Art. 1st, Sect. 1st. Gunpowder, nitro-glycerine, and other explosive agents are pro-

perty, yet the state may confine traffic in them to certain classes of persons, and confine the storage to certain localities. Certain poisons are property, but the sale of them may be restricted to certain persons, namely, those having sufficient intelligence to know when they ought to be used, and of sufficient character for prudence to give assurance that these deadly agents will not be carelessly administered. So intoxicating liquors are deemed by the law, agents that are dangerous to the morals, health, and lives of the people, though useful for proper purposes; their sale in the hands of men not of good character would be abused, and the people suffer therefrom. A preventive restriction is thrown around their sale by permitting men of good moral character alone to deal in them. But counsel exclaim, Have not men of bad moral character the same rights as men of good morals? Undoubtedly all are equal before the law as to the rights of property. But no one has the right to deal in these liquors, so far as his own interests are concerned; but as the wants of the people for certain lawful purposes demand that some should be allowed to sell them, the privilege is granted to certain persons not because they have a right to sell the liquors, but because the wants of the people demand the sale should be authorized to some extent and they will be less likely to do injury than others who might be intrusted with the privilege. The sale of the liquors by all men of good morals is not permitted, and the law is not therefore intended, nor does it operate, to secure commerce in intoxicating liquors to all persons of that class. It has been found that the health and lives of the people demand that a few licensed persons be empowered to sell these liquors for lawful purposes, and that all others be forbidden to deal in them. Of those who are authorized, the law requires satisfactory proof of good moral character. In this respect it differs not from all license laws, which bestow privileges upon fit and proper persons making application therefor. These laws have always been sustained. The authorities cited by counsel are not in conflict with the foregoing views.

In our opinion the provision of the statute in question is not in conflict with the Constitution.

The judgment of the Circuit Court is affirmed.

The foregoing opinion certainly challenges attention, if not criticism.

The statute of Iowa, after providing for the prohibition of sales of intoxi-

ating liquors generally, provides further, "That any citizen of the state and resident of the county in which he may be at the time, except hotel-keepers, keepers of saloons, eating-houses, grocery-keepers and confectioners, is permitted to buy and sell intoxicating liquors for mechanical, medicinal, culinary, and sacramental purposes only: *Provided*, he shall first procure the certificate of twelve citizens of the township in which he resides that he is of good moral character and a citizen of the county and state, and shall give bond in the penal sum of not less than one thousand dollars, with two good and sufficient sureties to be approved by the county judge; that he will conform to the provisions of this act and the act to which this is amendatory:" § 1575, Rev. 1860.

The twelfth General Assembly passed an act; the 1st section requires that a day for final hearing be fixed at the time of filing the application for permits, and also requires notice of such final hearing to be given by publication; and provides further, as follows:—

Sect. 2. "At such final hearing any resident of the county may appear and show cause why such permit should not be granted, and the same shall be refused unless the county judge (Circuit Court now) shall be fully satisfied that the requirements of the law have in all respects been fully complied with; that the applicant is a person of good moral character, and that taking into consideration the wants of the locality, and the number of permits already granted, such permit would be necessary and proper for the accommodation of the neighborhood:" Chap. 128, Acts 12th General Assembly.

By the Constitution of Iowa, it is declared that "*All men are, by nature, free and equal, and have certain inalienable rights, among which are those of enjoying and defending life and liberty,*

acquiring, possessing, and protecting property, and pursuing and obtaining safety and happiness:" Art. 1, *Bill of Rights*.

The application of Ruth in the foregoing case was refused on the ground (a proposition which was admitted in argument) that the applicant was not possessed of that standard of morals required by the statute, and the refusal was sustained on appeal by the foregoing opinion.

That intoxicating liquors are property, and that the constitutional provision above recited contemplates that *all* citizens, moral and immoral, may acquire, possess, protect, and dispose of property, are propositions which seem to be admitted in the foregoing opinion.

And, that the rights secured to the citizen in the above constitutional provision cannot be exercised by one citizen to the exclusion of others in the enjoyment of the same rights, or rights guaranteed by different provisions of the same instrument; that one citizen cannot enjoy his right of property to the damage of others in the enjoyment of their rights of property, health, comfort, morals, happiness, &c., &c., are propositions which may safely be conceded.

In short, this constitutional provision was made for *all*, as its language plainly imports, and for every species of property, certainly every kind of property recognised as such, at the time of the adoption of the provision above cited. The language is general. It is as broad and comprehensive as anything which could have been selected for the occasion. If it can be said that it does not apply to one kind of property, then it can be said with an equal show of reason that it does not apply to any other kind of property, which the prejudices of the hour may desire to place beyond the protection of the law.

The question is not, whether the constitution interferes with the police power

of the state to protect the people in their lives, health, and property. All of these are amply secured by the constitution, if justly administered. The general purpose of the constitution is to secure these rights to *all*, and it is plainly the duty, and within the power of the state (and this is its police power, as also the limit of that power) to pass laws which shall carry out that general purpose and intention.

The opinion above quoted adopts as the principle upon which it is proposed to stand, "That the equality secured to the citizen cannot be exercised to the damage of the lives and property of others; nor can property be acquired, enjoyed, and disposed of to the peril of the lives, health, happiness, and property of others." And this is not denied, for the reason that any other rule would produce inequality. But, we may add as the converse of this proposition, and in support of the other side of the case, that the right of the public to the preservation of its morals, health, happiness, &c., &c., cannot be enjoyed to the exclusion of the enjoyment of the right of property, because the same inequality would be thereby introduced. Yet this is the exact effect of the opinion quoted above, for the court in the same breath proceed to say, that an act which provides for, and produces precisely these consequences, is not in conflict with any constitutional provision.

We think the act in question *does* provide that one citizen or class of citizens may enjoy his or their rights under the constitution to the damage and even exclusion of other citizens or classes of citizens in the enjoyment of their rights.

To illustrate, let it be supposed that the whole community is divided into two classes, one of moral character and the other of immoral character in the sense of this act.

Does not the act in question say in unmistakable terms, that the portion of

the community whose characters are moral shall enjoy their rights of property, health, happiness, public morals, &c., &c., to the exclusion of the other portion's right of property in intoxicating liquors? We think it does most clearly. The theory of the act is, that the right of property in intoxicating liquors cannot be enjoyed *in any manner* by a man of bad moral character, as contemplated by the act, without interfering with the moral portion of the community in the enjoyment of their rights to the preservation of the public morals, public health, &c., and in order to protect the latter the legislature of Iowa have undertaken to destroy the former, by saying that the immoral man shall not enjoy the right of property in intoxicating liquors *at all*. This is precisely what the court, in the foregoing opinion, have said cannot be done, with reference to the right of the citizen to the enjoyment of health, preservation of public morals, &c.

We agree with the court as to the breadth and design of the constitutional provision referred to.

It was intended to secure the right of property to *all*, and in *every* kind of recognised property. It was also intended to secure the right of the citizen and the public to the preservation of the public health, public morals, peace, quiet, happiness, &c., &c.

What then is to be done? Clearly it is the duty of the legislature, in the exercise of the police power of the state, to secure by appropriate legislation the enjoyment of *all* of these rights. It is as important that the right of the citizen to acquire and dispose of property should be protected, as that any other right should be. And to *abolish* the right to acquire and dispose of any one kind of property, even though it be in good faith to secure the more complete enjoyment of some other right, is just as much beyond the power of the legislature, as

it would be, to abolish the constitution *in toto*. Each right defined by the Bill of Rights is as sacred and inviolable as each other right therein defined, and to make any one yield to another, is to lay the foundation for that loose and irregular form of government which it was the design of the constitution, and of society organizing government, to prohibit. Something was wanted to define and secure certain natural, fundamental, and inviolable rights. It was thought that a written constitution would do this, but if the legislature, under pretence of more perfectly securing one of such rights, may abolish others, then the whole scheme is a failure.

We believe that the legislature have no such power, that all of the rights defined by the constitution are intended to stand together, that they should be reconciled into harmony and concord with each other, and that the police power of the state can only be exercised to carry out this purpose. It is the duty of the legislature (and of course within the power before-mentioned) to *regulate*, to prescribe the *mode* and the *manner* of enjoying these rights, and in doing so, the right may be very seriously affected, though a *substantial right must be left in all cases*. The police power is exhausted when it has done this. It cannot be extended to the abolition of the right itself, for if it could, the Bill of Rights would be subordinate to that vague and undefined power, and at the mercy of a legislature elected by a mere majority.

The principle is very concisely stated by JOHNSON, J., in *Wynehamer v. The People*, 3 Kernan 421; where it is said, "The same sort of question is presented in respect to the infringement by legislation of men's private rights, and the regulation of them, and their enjoyment. *The substantial right cannot be destroyed*; its enjoyment is not an offence, and legislation cannot make it an offence. At the same time the *mode* of enjoyment

in its broadest sense, is subject to legislation, though it (the right) be affected very injuriously, provided a *substantial right is left*."

Does the act in question, under the construction given, leave a substantial right of property in intoxicating liquors to Ruth? We think not.

The same question arises under statutes that affect the *remedy* on contracts, with reference to that provision of the Constitution of the United States which forbids the legislature to impair the obligation of contracts by law. The legislature may regulate the remedy, and may alter and abridge it so as to affect the value of the contract very materially "so long as they (contracts) are submitted to the ordinary and regular course of justice, and the existing remedies preserved *in substance* and with integrity: *Holmes v. Lansing*, 3 John. Cas. 75; *Morse v. Gould*, 1 Kern. 281.

The *substantial right* guarantied by the Constitution of the United States, to the citizen to enforce the obligation of his contract must not be destroyed by the legislature.

Again, the same question arises under statutes which assume to regulate the exercise of corporate franchises. The legislature may regulate the *mode* and the *manner* of enjoying the rights conferred by the charter, but it cannot destroy the charter itself or any essential right under it.

Thus, in *Benson v. Mayor, &c.*, 10 Barb. 45, the court say, "The state may legislate touching them so far as they are *publici juris*. Thus, laws may be passed to punish neglect or misconduct in conducting the ferries, to secure the safety of passengers from danger and imposition, &c. *But the state cannot take away the ferries themselves, nor deprive the city of their legitimate rents and profits.*"

Why? Because the right of the city to the ferries and their legitimate rents

and profits was fixed by charter or contract, the obligation of which was held sacred by the constitution. If the legislature cannot destroy the rights of a corporation under a contract, the obligation of which is secured by the constitution for the preservation of the lives, safety, and comfort of the public, upon what principle can it destroy the rights of an individual whose rights are *directly* secured by the constitution?

The opinion of the Supreme Court of Iowa seems to be predicated upon the idea that the police power of the state is some extraordinary power which exists independent of the constitution, and which may be exercised by the legislature when the "public good" requires it in opposition to the constitution.

The true rule is, however, that whatever cannot be accomplished without an infraction of the constitution cannot be considered a "public good," and is in contemplation of law a public calamity when accomplished.

The police power of the state is derived from the constitution, and is no more than a power to carry out and enforce each and all of its provisions, and in no sense is it a power to destroy, when in the opinion of the legislature the "public good" or the "public morals" require it.

In the case of *Barker v. People*, 3 Cow. 686, the court said: * * * "The whole constitution must be supported, and all its powers reconciled into concord. A law which should declare it a crime to exercise any fundamental right of the constitution (as the right of acquiring and disposing of property, we add) would infringe an express rule of the system, and hence is not within the general power over crimes." * * *

"Many rights are plainly expressed and intended to be inviolable in all circumstances. A law enacting that a criminal should, as a punishment for his offence, forfeit the right of trial by

jury, would contravene the constitution, and a deprivation of this right could not be allowed in the form of a punishment. Any other right thus secured as universal and inviolable, must equally prevail against the power of the legislature to select and prescribe punishments."

From this case we see that the legislature, in the exercise of its plenary power over crimes and punishments, could not do what the legislature of Iowa has undertaken to do by the act in question. The legislature cannot declare it to be a crime to exercise the right of acquiring and disposing of property, nor can it declare a forfeiture of the right as a punishment for any other offence. Still, the exercise of the right in a particular *manner* may be declared a crime, or may be forfeited as a punishment for some other crime, so long as the *substantial right* itself is not declared forfeited or made criminal. It is upon this principle that all *regulation* rests. The legislature may prohibit sales of intoxicating liquors to be used as a beverage, for such legislation only goes to the *manner* of enjoying the right. The right can be "substantially" enjoyed without such sales. And the same rule we understand to apply to all other kinds of property, which under certain circumstances are acknowledged to be dangerous to the well-being of society.

The court say, in the foregoing opinion, that "certain poisons are property, but the sale of them may be restricted to certain persons, namely, those having sufficient intelligence to know when they ought to be used, and sufficient character for prudence to give assurance that these deadly agents will not be carelessly administered." This proposition is not denied, for it also only goes to the *manner* of enjoying the right, and is therefore not a parallel case. If the party desiring to "acquire, possess, and dispose of these deadly agents" does not himself possess the requisite qualifica-

tion, he can still enjoy the right "substantially," by employing some one possessed of the proper qualifications, to handle the property for him. Such legislation would undoubtedly affect the right, but it does not destroy it. It does not necessarily preclude the citizen from "buying and selling" to require him to buy and sell in a certain manner.

The legislature of the state in the exercise of the police power, to secure to all the substantial enjoyment of *all* the rights defined by the constitution, can compel the enjoyment by every individual of his rights in a *manner* not to conflict with others in the equal enjoyment of their rights, not however legislating upon the manner, so as to destroy the substantial right.

"*Sic utere tuo ut alienum non lædas*" is the maxim which lies at the foundation of the power. And to whatever enactment the maxim will not apply the power itself does not extend: Cooley Constitutional Limitations 577.

According to the foregoing opinion, however, it is not sufficient that the citizen should so enjoy his own rights as not to interfere with others in the enjoyment of theirs. But an immoral man must not enjoy certain of his rights *at all*. Not, indeed, because such enjoyment will *necessarily* interfere with others in the

enjoyment of their rights, but because he *may* abuse the right.

If such a proposition can be maintained, then there is no right that is beyond the control of the legislature, for we *may*, and indeed all do, abuse almost every right that we enjoy. All the legislature can do is to prohibit the abuse, and punish us for a violation of the prohibition. No other theory is at all consistent with civil liberty.

Many other authorities might be cited in support of the foregoing views, but it is scarcely necessary. A moment's reflection on the practical application of the rule as stated in the opinion, in support of which no authorities are cited by the court, we think, will show that the doctrine cannot be maintained. The opinion is plainly inconsistent with itself, for the reason that the principle which the court states as the authority for protecting the public in the enjoyment of its health, comfort, morals, &c., &c., unless violated, will protect every individual, in some measure at least, of enjoyment of the right of property in intoxicating liquors, and every other kind of property as well. Such a substantial enjoyment is prohibited, however, to Ruth, by the statute in question and the opinion quoted above.

W. W. M.

United States Circuit Court. District of Indiana.

THE EVANSVILLE NATIONAL BANK v. METROPOLITAN NATIONAL BANK OF NEW YORK, AND THE ASSIGNEES OF WATTS, CRANE & CO.¹

A transfer of stock in a banking corporation, organized under the Act of June 3d 1864, to a *bonâ fide* holder, is valid though the seller or pledgor be at the time indebted to the bank, and a by-law of the bank declared that no transfer of the stock by any shareholder indebted to the bank should be made without the consent of the board of directors. Such a by-law in effect attempts to create a lien upon

¹ We are indebted to Josiah H. Bissell, Reporter for the United States Courts for the Seventh Judicial Circuit, for the following opinion.